

ESTTA Tracking number: **ESTTA308491**

Filing date: **09/28/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189418
Party	Plaintiff Speed Channel, Inc.
Correspondence Address	Daniel E. Bruso Cantor Colburn LLP 20 Church Street, 22nd Floor Hartford, CT 06103-3207 UNITED STATES DBruso@cantorcolburn.com, DMayhew@cantorcolburn.com
Submission	Motion to Compel Discovery
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Signature	/Daniel E. Bruso/
Date	09/28/2009
Attachments	2DZ8699.pdf ( 26 pages )(1212698 bytes )

Board order Applicant to supplement its response and produce responsive documents.

The Board should recognize that Applicant's suggestion that its documents are privileged is equally absurd. Applicant's principal sold his interest in Speedvision Network LLC to the entities that currently own Speed Channel, Inc. This Request encompasses documents from the acquisition, which cannot be privileged to the extent that they involve communications with third parties. Accordingly, the Board should order Applicant to produce responsive documents.

**REQUEST NO. 42:**

All documents and things related to consumers association of the Speedvision Mark with Speed, Speed's products, Speed's services, or any of the foregoing.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 42 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

The Board should order Applicant to all documents that Applicant contends are privileged on its privilege log, or to confirm that it has no non-privileged documents.

**REQUEST NO. 43:**

All documents and things related to consumers referring to Speed as Speedvision from December 4,2004, through and including the date that Applicant responds to these Requests.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 43 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

This Request seeks information regarding consumers' association of Speed with the Speedvision Mark. Applicant's suggestion that responsive documents are somehow privileged is nonsensical, since the privilege does not extend to such documents. Accordingly, Speed Channel requests that the Board order Applicant to produce responsive documents or identify them on its privilege log.

**REQUEST NO. 44:**

All documents and things prepared by or for Applicant that relate to consumers' association, or lack of association, of Speed with the Speedvision Mark.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 44 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

This Request is directly relevant to any investigation that Applicant may have conducted prior to applying to register the marks in the Opposed Applications, its good faith investigation of the bases for its defenses and affirmative defenses set forth in Applicant's Answer and Affirmative Defenses, and the good faith investigation conducted while Applicant prepared its responses to Speed Channel's discovery. Speed Channel therefore request that the Board order Applicant to identify responsive documents on its privilege log, and that it produce any non-privileged documents forthwith.

**REQUEST NO. 46:**

All documents and things related to consumers association of the

Speed Marks with Speed, Speed's products, Speed's services, or any of the foregoing.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 46 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

Applicant's suggestion that consumers' association of Speed Channel with the Speed Marks is somehow irrelevant defies logic and common sense. The Speed Marks are integral elements of Speed Channel's claims against Applicant. Speed Channel requests that the Board Order Applicant to supplement its Responses, which supplemental response should remove all frivolous or otherwise meritless objections, affirmatively state whether documents exist and identify them on Applicant's privilege log.

**REQUEST NO. 47:**

All documents and things related to consumers referring to Speed using the Speed Marks.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 47 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

This Request is relevant to consumers' association of Speed Channel with the Speed Marks. As such, it is highly relevant. Accordingly, Speed Channel requests that the Board find that responsive documents are discoverable and must be produced.

**REQUEST NO. 49:**

All documents and things prepared by or for Applicant that relate to Speed's rights in the Speed Marks.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 49 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

Once again, there are no factual or legal bases for Applicant to seriously contend that Applicant's analyses regarding Speed Channel's rights in its marks are irrelevant. Applicant's attempts to do so violates its discovery obligations. Once again, Speed Channel requests that the Board order that responsive documents either be produced or identified on a privilege log.

**REQUEST NO. 49":**

All documents and things that support or contravene Applicant's denial of Speed's claim that Applicant's Mark is confusingly similar to the Speed Marks, the Speedvision Marks, or any of them.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 49\* to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Oppose is already in possession of Applicant's April 3, 2009 letter to Daniel E. Brusio, Esq., counsel for Opposer, in response to Opposer's March 25, 2009 letter to Brian J. Hurh, Esq., counsel for Applicant.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

Speed Channel acknowledges that this Request should have been numbered as Request No. 50. Regardless, the letter referred to in Applicant's response comprises rhetoric from counsel that is not competent evidence. Once again, Speed Channel requests that the Board order Applicant to produce all relevant documents and things forthwith.

35. Applicant's answers to Speed Channel's Interrogatories are similarly flawed. In particular, and without limiting the scope of its objections, Applicant's counsel, rather than Applicant, signed Applicant's answers to Speed Channel's Interrogatories. *See* Exhibit D. In doing so, counsel has rendered himself a fact witness that subjects him to disqualification pursuant to TBMP § 405.04(c), which provides that:

**Interrogatories must be answered by the party served.** If the party served is a corporation, partnership, association, or governmental agency, the interrogatories must be answered by an officer or agent, who must furnish whatever information is available to the party served.

The term "agent" includes an attorney, who may answer even though he has no personal knowledge of the facts stated in the answers; the attorney's answers, like an officer's answers, must contain the information available to the party served. However, **an attorney who answers interrogatories on behalf of a corporation, partnership, association, or governmental agency may thereafter be exposed to additional discovery and possibly even disqualification.**

Answers to interrogatories must be signed by the person making them, and objections to interrogatories must be signed by the attorney making them.

TBMP § 405.04(c) (emphasis supplied).

36. Speed Channel offered Applicant and its counsel an opportunity to supplement Applicant's answers to Speed Channel's Interrogatories executed by Applicant. *See*

September 10, 2009, Letter, pp. 13 – 14. However, as of the date of the instant Motion, Applicant has failed to do so. Therefore, Applicant's counsel may be deposed as a fact witness regarding all issues relating to Applicant's responses to Speed Channel's Interrogatories.

37. Speed Channel also identified a number of specific objections to Applicant's answers to Speed Channel's Interrogatories, and requested that Applicant supplement them. *See* Exhibits C, D and G. For the Board's convenience, copies of each of Speed Channel's Interrogatories, Applicant's objection and response to each of Speed Channel's Interrogatories and each of Speed Channel's objections to Applicant's objection and response, all of which are set forth in Exhibit G, the September 10, 2009, Letter, appear below:

**INTERROGATORY NO. 2:**

Describe with specificity the derivation of Applicant's Marks.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Interrogatory No. 2 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects on the ground that the request is ambiguous as to the meaning and scope of "derivation" with respect to Applicant's Marks. Subject to, and without waiver of, this objection, there are no alternate forms of Applicant's Marks that Applicant considered for the Opposed Applications.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR**

### **SUPPLEMENTATION**

Applicant's suggestion that the derivation of Applicant's Marks is irrelevant is incorrect as a matter of law. See TBMP §414(4). Speed Channel requests that the Board order Applicant to supplement its response and remove this frivolous objection.

### **INTERROGATORY NO. 3:**

Set forth with specificity the reason for selecting the term "SPEEDVISION" as a term used in Applicant's Marks.

### **APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Interrogatory No. 3 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, see response to Interrogatory Nos. 1 and 2.

### **SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

Applicant's suggestion that Applicant's reasons for selecting SPEEDVISION as a mark is irrelevant is incorrect as a matter of law. Applicant's reasons for selecting its marks are highly relevant, particularly since Speed Channel's Notice of Opposition sets forth specific allegations regarding Applicant's bad faith regarding the Opposed Applications. Accordingly, Speed Channel requests that the Board direct Applicant to supplement its response

and remove this frivolous objection. TBMP § 414(4).

**INTERROGATORY NO. 5:**

Set forth all facts to support the claim that at the time Applicant filed the Opposed Applications, Applicant had a *bona fide* intent to use the marks identified in each of the Opposed Applications on each of the goods and services identified therein.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Interrogatory No. 5 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, the Opposed Applications were filed on an intent-to-use basis pursuant to 15 U.S.C. 5 1051(b), which includes a sworn statement of a *bona fide* intention to use the mark in commerce, which represents evidence of a good faith intention to use Applicant's Marks. Accordingly, at the time of filing the Opposed Applications, Applicant had a *bona fide* intent to use the marks identified in each of the Opposed Applications on each of the goods and services identified therein, and still has a *bona fide* intent to use such marks on such goods and services. In addition, since approximately January 2008, Applicant or Applicant's sole member explored the possibility of producing and distributing television programming related to automobiles, and motorsports in general, with the

potential of utilizing Applicant's Marks on such goods or services subject to Applicant's permissible use of such marks.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

Applicant's *bona fide* intent-to-use the marks identified in the Opposed Applications is highly relevant to the issues in this proceeding. Moreover, the Board has repeatedly recognized that declarations submitted during prosecution of a trademark application are insufficient to establish a *bona fide* intent-to-use. Accordingly, Speed Channel requests that the Board order Applicant to supplement its response to this Interrogatory.

Speed Channel notes that Applicant claims to have explored the possibility of distributing television programming relating to automobiles and motor sports. Speed Channel requests that the Board order Applicant to (1) produce copies of all documents related to its investigation; and (2) supplement its response to this Interrogatory by fully describing the programming, together with the goods and services, that Applicant considered distributing, identify the entities and individuals with whom Applicant has discussed or otherwise dealt regarding this issue, and the dates when the investigations and discussions occurred.

**INTERROGATORY NO. 6:**

Identify all third party marks (whether registered or not) of which

You are aware that include the word element SPEED for goods or services in International Classes 38,41, or either of them, within the United States.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Interrogatory No. 6 to the extent that the request seeks information that is publicly available from the PTO. Applicant further objects to the extent that the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

Whether information is available from the PTO is irrelevant. Applicant must provide all responsive information within its possession, custody and control. Speed Channel requests that the Board order Applicant to supplement its responses forthwith, and to withdraw its ridiculous objection.

**INTERROGATORY NO. 13:**

Identify any good offered or to be offered and service provided or to be provided under Applicant's Marks that are not identified in the Opposed Applications.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Interrogatory No. 13 to the extent that it seeks information that is not relevant to the issues in this proceeding or

reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, Applicant is not currently offering any good or providing any service, and presently does not intend to offer any good, or provide any service, under Applicant's Marks that is not identified in the Opposed Applications.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

The goods and services offered or to be offered under the marks identified in the Opposed Applications are highly relevant. The Board should order Applicant to supplement its response and withdraw its meritless suggestion that this information is irrelevant. See TBMP § (8), (13).

**INTERROGATORY NO. 17:**

Describe in detail all facts and evidence to support Applicant's denial of any allegation in Speed's Notice of Opposition, with reference to the specific allegation(s) to which the facts and evidence relate.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Interrogatory No. 17 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant states that there is no likelihood of

confusion between Applicant's Marks and Opposer's SPEED marks, and that Opposer has no rights in SPEEDVISION due to its non-use of such marks, its abandonment of such marks, and the cancellation of such marks by the PTO. Applicant is also aware that, in as early as 1999, Opposer, or one of its affiliates (including Fox), had planned to abandon the SPEEDVISION mark. See also Applicant's response to Interrogatory No. 15.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

It is difficult to perceive how Applicant can actually suggest that factual averments made in Applicant's Answer and Affirmative Defenses, together with the factual bases for those statements, are privileged, particularly since Applicant publicly stated its position with respect to Speed Channel's allegations when it filed its Answer. Accordingly, Speed Channel respectfully requests that the Board order Applicant to supplement its responses.

**INTERROGATORY NO. 21:**

If You contend that there is no likelihood of confusion between the Speed Marks and Applicant's Marks, describe in detail the basis for Your contention.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Interrogatory No. 21 to the extent that it seeks information protected by the attorney-client privilege and/or the

attorney work-product doctrine. Applicant further objects on the ground that the interrogatory seeks a conclusion of law regarding "likelihood of confusion." Subject to, and without waiver of, this objection, the word "speed" is highly suggestive or descriptive of Opposer's goods and services, thus warranting a very narrow scope of protection under U.S. trademark law. In fact, the U.S. Trademark Office database reveals many registrations and applications incorporating the word "speed" for numerous goods and services. Opposer's attempt to claim exclusive rights to a word that is commonly associated with and describes a feature of automobiles, and motorsports in general, contravenes trademark law and policy. Even if it were true that Opposer's Speed Marks have acquired some degree of fame, this does not afford Opposer absolute rights to that word, especially when used as one syllable of a non- confusingly similar multi-syllabic term. SPEEDVISION is sufficiently different from SPEED in terms of sight, sound and connotation to avoid confusion, particularly since the word "speed" is in common usage as a trademark and descriptive term, and when it is used in a highly suggestive or descriptive manner.

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

The fact that an Interrogatory seeks a conclusion of law does not relieve Applicant of its duty to fully answer the Interrogatory.

TBMP § 405.02 (“An interrogatory that is otherwise proper is not necessarily objectionable merely because it requires a party to give an opinion or contention that relates to fact or the application of law to fact.”). Accordingly, the Board should order Applicant to supplement its response.

**INTERROGATORY NO. 24:**

Describe how Applicant complied with its obligations to preserve all Documents, including but not limited to electronically stored information, relevant to the issues in this case, including by identifying all steps taken and the dates such steps were taken.

**APPLICANT’S OBJECTION AND RESPONSE:**

Upon receiving notice of Opposer's request for an extension of time to file a Notice of Opposition against the Opposed Applications, Applicant has made all reasonable efforts to preserve any potentially relevant documents.

**SPEED CHANNEL’S OBJECTION AND REQUEST FOR SUPPLEMENTATION**

The Board should order Applicant to fully describe the “reasonable efforts” it undertook to preserve electronic data.

**INTERROGATORY NO. 27:**

Identify the specific person(s) who participated in the decision to file the Opposed Applications and their role.

**APPLICANT’S OBJECTION AND RESPONSE:**

Roger Williams  
Phoenix 2008 LLC  
1 14 Ferris Hill Rd.  
New Canaan, CT 06840  
(203) 972-6447

**SPEED CHANNEL'S OBJECTION AND REQUEST FOR  
SUPPLEMENTATION**

The Board should order Applicant to fully describe Mr. Williams' role in Applicant's decision to file the Opposed Applications.

38. In addition to serving Interrogatories and Requests for Production of Documents, Speed Channel served Requests for Admissions upon Applicant. *See* Exhibit E. Accordingly, Speed Channel seeks to test the sufficiency of Applicant's responses to Speed Channel's Requests for Admission, all pursuant to TBMP § 524, Fed. R. Civ. P. 36(a) and 37 C.F.R. § 2.120(h). TBMP § 524 provides that:

If a propounding party is dissatisfied with a responding party's answer or objection to a request for admission, and wishes to obtain a ruling on the sufficiency thereof, the propounding party may file a motion with the Board to determine the sufficiency of the response.

If the Board, upon motion to test the sufficiency of a response to a request for admission, determines that an answer does not comply with the requirements of Fed. R. Civ. P. 36(a), it may order either that the matter is deemed admitted or that an amended answer be served. If the Board determines that an objection is not justified, it will order that an answer be served.

39. Like TBMP § 523, TBMP § 524 requires that a party seeking to test the sufficiency of responses to Requests for Admission produce copies of the Requests for Admissions, any objections and answers, the bases for the motion and the means by which the moving party attempted to resolve the dispute in good faith. *See* TBMP § 524.02.
40. Speed Channel's Requests for Admission are annexed hereto as Exhibit E. Applicant's

responses to Speed Channel's Requests for Admissions are annexed hereto as Exhibit F.

41. Speed Channel avers that, as described in connection with its attempt to resolve the dispute regarding Applicant's responses to its Requests for Production and its Interrogatories, it made several good faith attempts to resolve the dispute. However, despite its attempts to do so, the parties have been unable to resolve the dispute. *See* p. 2, *infra* and Exhibit G, September 10, 2009, Letter, p. 1.
42. In its September 10, 2009, Letter, Speed Channel identifies a number of general and specific objections to Applicant's responses to Applicant's responses to Speed Channel's Requests for Admissions, In particular, and without limiting the scope of the foregoing, Speed Channel states that

Applicant's general objection, in which it states that it denies any Request for Admission that it does not specifically admit, is deficient and inappropriate. TBMP §407.03(b) provides that "[a]n answer must admit the matter of which an admission is requested; deny the matter; or state in detail the reasons why the responding party cannot truthfully admit or deny the matter." Regardless, a general statement that Applicant denies anything that it does not explicitly admit violates TBMP § 407. Accordingly, Speed Channel expects that Applicant will supplement its responses to Speed Channel's Requests for Admissions by, *inter alia*, removing this frivolous objection.

Exhibit G, September 10, 2009, Letter, p. 16.

43. Speed Channel also interposes a number of specific objections to Applicant's responses to Speed Channel's Requests for Admissions.
44. For the Board's convenience, copies of each of Speed Channel's Requests for Admission, Applicant's objection and response to each of Speed Channel's Requests for Admissions and each of Speed Channel's objections to Applicant's objections and responses, as set forth in the September 10, 2009, Letter, appear below:

**REQUEST NO. 1:**

Each of the documents and things that Applicant has produced to Opposer is a true, accurate, authentic and complete copy of such document or thing.

**APPLICANT'S OBJECTION AND RESPONSE:**

It is admitted that any documents and things that Applicant has produced to Opposer as of the time of these responses is a true, accurate, authentic and complete copy of such document or thing. Applicant otherwise denies Request No. 1.

**SPEED CHANNEL'S OBJECTION TO APPLICANT'S RESPONSE**

In order for Applicant to respond meaningfully to this Request for Admission, it must actually produce documents. To date, it has not, which renders Applicant's response to this Request for Admissions false. Speed Channel therefore requests that the Board order Applicant to supplement its response after it produces documents.

**REQUEST NO. 3:**

Applicant has produced all documents and things that are responsive to any request for production of documents and things, or any interrogatory, from Opposer.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant has to the best of its knowledge, information and belief

produced all non- privileged documents and things in its possession or within its control that are responsive to any request for production of documents and things, or any interrogatory, from Opposer, as of the time that Applicant responds to such interrogatory or request for production of documents and things. Applicant otherwise denies Request No. 3.

**SPEED CHANNEL'S OBJECTION TO APPLICANT'S RESPONSE**

Since Applicant has refused to produce any documents, Applicant's suggestion that it has produced documents is false on its face. Speed Channel requests that the Board order Applicant to correct its response to this Request for Admission and supplement its response.

**REQUEST NO. 5:**

Consumers associate the Speedvision Mark with Speed.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 5 on the ground that it is vague and ambiguous. Applicant otherwise denies Request No. 5.

**REQUEST NO. 6:**

Consumers associate the Speedvision Mark with Speed.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 6 on the ground that it is vague and ambiguous. Applicant otherwise denies Request No. 6.

**REQUEST NO. 7:**

Applicant has no evidence that contravenes Speed's contention that consumers associate the Speedvision Mark with Speed.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 7 on the ground that it is vague and ambiguous. Applicant otherwise denies Request No. 7.

**SPEED CHANNEL'S OBJECTION TO APPLICANT'S RESPONSES TO REQUESTS FOR ADMISSION NOS. 5 – 7**

Applicant's suggestion that these Requests for Admission are either "vague" or "ambiguous" is ridiculous on its face. Applicant completely fails to identify the bases for its objections, which it is required to do under TBMP § 407.03(b). Speed Channel requests that the Board order Applicant to its responses and answer the Requests for Admission.

**REQUEST NO. 8:**

Consumers associate the Speed Marks with Speed.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 8 on the ground that it is vague and ambiguous. Applicant further objects on the ground that the request is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence, as the issue of likelihood of confusion in this case does not concern the relationship between Opposer and its Speed Marks.

Subject to, and without waiver of these objections, Applicant is presently without sufficient knowledge or information to admit or deny this request and therefore denies Request No. 8.

**REQUEST NO. 9:**

Applicant has no evidence that contravenes Speed's contention that consumers associate the Speed Marks with Speed.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 9 on the ground that it is vague and ambiguous. Applicant further objects on the ground that the request is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence, as the issue of likelihood of confusion in this case does not concern the relationship between Opposer and its Speed Marks. Subject to, and without waiver of these objections, Applicant is presently without sufficient knowledge or information to admit or deny this request and therefore denies Request No. 9.

**SPEED CHANNEL'S OBJECTION TO APPLICANT'S RESPONSE TO REQUESTS FOR ADMISSION NOS. 9, 10:**

Consumers' association of Speed with the Speed Marks, together with Applicant's possession of documents that contravene Speed's contention that consumers associate the Speed Marks with Speed, are highly relevant. Moreover, there is nothing vague or ambiguous about either Request. Finally, while Applicant is free

to hold opinions regarding the relevance of the Speed Marks with Speed, the fact remains that Speed is asserting the Speed Marks in this proceeding. This, in and of itself, renders the Speed Marks relevant. Accordingly, Speed Channel requests that the Board order Applicant to withdraw its frivolous objections, describe the investigation that it conducted, and state in detail why it cannot admit or deny the substance of these Requests for Admission. See TBMP §407.03(b) (“An answer must admit the matter of which an admission is requested; deny the matter; or state in detail the reasons why the responding party cannot truthfully admit or deny the matter.”).

**REQUEST NO. 10:**

Applicant's use of Applicant's Mark is likely to cause confusion with the Speed Marks.

**APPLICANT'S OBJECTION AND RESPONSE:**

Applicant objects to Request No. 10 on the ground that it is vague and ambiguous, as it is unclear which of Applicant's Marks is being referred to by the phrase "Applicant's Mark," given that each of Applicant's Marks is different and/or represents a different good or service. Applicant further objects on the ground that the request seeks a legal conclusion regarding the "likelihood of confusion" between any of Applicant's Marks and the Speed Marks. Applicant otherwise denies Request No. 10.

**SPEED CHANNEL'S OBJECTION TO APPLICANT'S  
RESPONSE**

The term "Applicant's Marks" are defined in Speed Channel's Requests for Admissions. Accordingly, Speed Channel requests that the Board order Applicant to amend its response to this Request for Admission in a manner consistent with this definition. Additionally, Applicant's suggestion that the Request for Admission is objectionable because it calls for a legal conclusion is contrary to existing law. Applicant requests that the Board order Applicant to supplement its response to remove this frivolous objection.

45. Based on the foregoing, it appears clear that Applicant has no intention of producing any responsive documents, supplementing its responses to Speed Channel's Discovery Requests, producing a privilege log or otherwise complying with its discovery obligations. Accordingly, requests that the Board:
- a. Find that Speed Channel has made the good faith attempt required by TBMP §§ 523, 524 to resolve the instant dispute, but that it has not been able to do so;
  - b. Allow the instant Motion on its terms;
  - c. Find that Applicant has interposed frivolous objections to Speed Channel's Interrogatories and Requests for Production;
  - d. Order Applicant to supplement its responses to Speed Channel's Requests for Production, Interrogatories and Requests for Admissions, without objection,

all pursuant to all pursuant to TBMP §§ 403.03 and 406.04;

- e. Direct that Applicant's supplemental responses include detailed descriptions of the investigation that Applicant conducted in order to provide meaningful responses to Speed Channel's Discovery Requests; and
  - f. Order Applicant to produce all responsive documents in its possession, custody or control, without objection;
  - g. Order Applicant to produce a privilege log that identifies each document that Applicant claims is privileged, including without limitation the document's author, the date that the document was created, the subject of the document, all recipients of the document, the privilege being asserted, the basis for the assertion that the document is privileged and a description of the document that is sufficiently detailed to permit Speed Channel to determine whether to challenge Applicant's assertion of privilege;
  - h. Find that Applicant's responses to Speed Channel's Request for Admissions are insufficient.
46. Speed Channel further requests that the Board find that Find that Applicant's responses to Speed Channel's Request for Admissions are insufficient.
47. Finally, Speed Channel requests that the Board suspend the instant proceeding pending disposition of the instant Motion, all pursuant to TBMP §§ 523.01 and 524.03.

WHEREFORE, Opposer Speed Channel, Inc., respectfully requests that the Board allow the instant Motion on its term and that it grant such other relief as it deems just and appropriate.

RESPECTFULLY SUBMITTED,  
Speed Channel, Inc.

Dated: September 28, 2009

BY:           /Daniel E. Bruso/            
Daniel E. Bruso, Esq.  
Curtis Krechevsky, Esq.  
Cantor Colburn LLP  
20 Church Street, 22<sup>nd</sup> Floor  
Hartford, Connecticut 06103-3207  
Phone: 860-286-2929  
Fax: 860-286-0115  
DBruso@cantorcolburn.com

**CERTIFICATE OF SERVICE**

I, Daniel E. Bruso, Esq., counsel to Opposer Speed Channel, Inc. in Opposition Proceeding No. 91189418, certify that, on the 28th day of September 2009, I served a copy of SPEED CHANNEL, INC.'S MOTION TO (1) COMPEL APPLICANT'S RESPONSES TO SPEED CHANNEL'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND ITS FIRST SET OF INTERROGATORIES; (2) TEST THE SUFFICIENCY OF APPLICANT'S RESPONSES TO SPEED CHANNEL'S REQUESTS FOR ADMISSIONS; AND (3) SUSPEND, via first class mail, postage prepaid, upon:

Brian J. Hurh, Esq.  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue NW  
Suite 200  
Washington, DC 20006-3402

          /Daniel E. Bruso/            
Daniel E. Bruso